

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RAYFORD MACK,

Plaintiff,

V.

**DEPARTMENT OF
HUMAN RESOURCES, et al.,**

Defendants.

**CIVIL ACTION NO.:
2:07-CV-465-MHT**

**DEFENDANTS' MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM OR, IN THE ALTERNATIVE,
MOTION FOR A MORE DEFINITE STATEMENT**

COME NOW Defendants in the above-styled action and respectfully move this Court as follows:

1. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants hereby move this Court to dismiss Plaintiff's Complaint for failure to state a claim. Plaintiff has failed to allege the basic elements of a claim against the Defendants as a matter of law.

2. Alternatively, Defendants move pursuant to Rule 12(e) of the Federal Rules of Civil Procedure for an Order from this Court requiring Plaintiff to provide a more definite statement as to the alleged claim against the Defendants.

3. In support of their Motion, the Defendants submit the brief filed contemporaneously herewith.

WHEREFORE, premises considered, Defendants respectfully request that the Court dismiss the Plaintiff's Complaint or alternatively, Defendants request that the Court require the Plaintiff to provide a more definite statement as to the claims against the Defendants.

Respectfully submitted,

/s/ John B. Holmes, III

Warren B. Lightfoot, Jr.

John B. Holmes, III

Abigail H. Avery

Attorneys for the Defendants

Department of Human Resources and

Dr. Page Walley, Commissioner

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

2400 Regions/Harbert Plaza

1901 Sixth Avenue North

Birmingham, Alabama 35203-4604

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

Email: wlightfoot@maynardcooper.com

jholmes@maynardcooper.com

aavery@maynardcooper.com

Sharon E. Ficquette

DEPARTMENT OF HUMAN RESOURCES

Legal Office

P.O. Box 304000

Montgomery, Alabama 36130-4000

Telephone: (334) 242-9330

/s/ Alice Ann Byrne

Alice Ann Byrne

Attorney for the Defendants

State Personnel Department and

Jackie Graham, Director of State

Personnel Board

STATE PERSONNEL DEPARTMENT
Folsom Administrative Building
64 North Union Street ~ Suite 316
Montgomery, Alabama 36130
Telephone: (334) 242-3451
Facsimile: (334) 353-4481
Email: aliceann.byrne@personnel.alabama.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2007, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

For the Plaintiff:

Russell W. Adams, Esq.
Rocco Calamusa, Jr., Esq.
WIGGINS CHILDS QUINN & PANTAZIS, P.C.
The Kress Building
301 19th Street North
Birmingham, Alabama 35203-3204

/s/ John B. Holmes, III
Of Counsel